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Second Sunset Review
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for Final Results of Expedited
Sunset Review of the Countervailing Duty Order on Cut-to-Length
Carbon Steel Plate from Brazil

Summary

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty order on certain cut-to-length carbon steel plate (“CTL Plate”) from Brazil. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues that we are addressing in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of the Order

On July 9, 1993, the Department of Commerce (“the Department”) published in the Federal Register its final determination on certain steel products from Brazil. See Final Affirmative Determinations: Certain Steel Products from Brazil; 58 FR 37295 (“Final Determination”). In the final determination of the investigation, the Department found estimated net subsidy rates of 6.07 percent for Usinas Siderurgicas de Minas Gerais, S.A. (“USIMINAS”), 44.66 percent for Companhia Siderurgica Paulista (“COSIPA”), and 21.84 percent for “all others” based on the following countervailable programs: Equity Infusions program, Fiscal Benefits by Virtue of Industrial Development Council (“CDI”) programs, IPI Rebate Program Under Law 7554/86 program, Banco Nacional de Desenvolvimento Economico e Social Financing (“BNDES”) and Provision of Infrastructure program. On August 17, 1993, the Department published the countervailing duty order (“CVD order”) and amendment to the final determination, which

covered only certain cut-to-length carbon steel plate from Brazil.¹ See Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil, 58 FR 43751 (August 17, 1993). The net subsidy rates were amended. The amended rates were 5.44 percent for USIMINAS, 48.64 percent for COSIPA, and 23.10 percent for all other producers and exporters of subject merchandise.

There were no reviews conducted since the original investigation of the CVD order and the initiation of the first sunset review. The Department published its final results of the first sunset review, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Certain Cut-to-Length Steel Plate From Brazil; Final Results of Countervailing Duty Expedited Sunset Review, 65 FR 18065 (April 6, 2000) (“First Sunset Review”). In that review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of countervailable subsidies at the same margins as found in the amended final determination of the investigation. As a result, pursuant to 19 CFR 351.218 (e)(4), the Department published a notice of the continuation, based on the Department and the International Trade Commission’s (ITC) affirmative findings. See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

Since the publication of the notice of continuation of the first sunset review, no administrative reviews, or changed circumstances reviews of the CVD order have been conducted. However, on June 19, 2003, the Department ruled that continuous cast steel slab is outside of the scope of the CVD order. See Notice of Scope Rulings and Anti-circumvention Inquires, 68 FR 36770 (June 19, 2003).

Background

On November 1, 2005, the Department published the notice of initiation of the second sunset review of the CVD order on CTL Plate from Brazil, pursuant to section 751(c) of the Act. See Initiation of Five-Year (Sunset) Reviews, 70 FR 65884 (November 1, 2005) (“Initiation of Second Sunset Review”). The Department received notices of intent to participate from IPSCO, Inc., Mittal Steel USA ISG, Inc., Nucor Corporation, Oregon Steel Mills, Inc., and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers

¹ Subsequent to the Department’s determination on July 9, 1993, the International Trade Commission (ITC), in accordance with section 705(d) of the Act, notified the Department of its final determinations regarding each of the two classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cut-to-length carbon steel plate from Brazil were materially injuring a U.S. industry. The ITC also determined that a U.S. industry was not materially injured, or threatened with material injury, by reason of imports of certain cold-rolled carbon steel flat products from Brazil.

International Union, AFL-CIO-CLC (“USW”)² (collectively “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ Domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as U.S. producers of CTL Plate in the United States, and as a certified union or recognized group of workers engaged in the manufacturer, production or wholesale of CTL Plate in the United States.

On November 30, 2005, the Department received a substantive response from domestic interested parties within the deadline specified in section 19 CFR 351.218(d)(3)(i).⁴ We did not receive any responses from any respondent interested party to this proceeding. In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), the Department notified the ITC that respondent interested parties provided an inadequate response to the Notice of Initiation of Five-Year (“Sunset”) Reviews.⁵ As such, the Department has conducted an expedited sunset review of the CVD order, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and 19 CFR 351.218(e)(1)(ii)(C)(2).

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995, the effective date of the Uruguay Round Agreements Act), as is the case in this proceeding. The Department determined that the sunset review of the CVD order on CTL Plate from Brazil is extraordinarily complicated; therefore, in accordance with section 751(c)(5)(B) of the Act, the Department extended the time limit for completion of the final results of this review until no later than May 30, 2006. See Cut-to-Length Carbon Steel Plate from Brazil and Spain; Extension of Time Limits for Final Results of Expedited Five-year (“Sunset”) Reviews of Countervailing Duty Orders; 71 FR 7018 (February 10, 2006).

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department has conducted this sunset review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy

² USW notes that it is a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture and production of the subject merchandise.

³ Mittal, IPSCO, and Oregon Steel Mills note that they were the petitioners or successors to petitioners in the investigation, and that they participated in the first sunset review.

⁴ On December 1, 2005, the Department received a letter from domestic interested parties concerning an amendment to their November 30, 2005 substantive response to the Department’s notice of initiation of the sunset review on CTL Plate from Brazil. In the letter, domestic interested parties added United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (“USW”), to the November 30, 2005 substantive response.

⁵ See December 21, 2005 letter to ITC, Robert Carpenter, Director of Investigations, from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, Import Administration.

determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“SCM”).

Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic interested parties argue that revocation of the CVD order on CTL Plate from Brazil would likely lead to the continuation or recurrence of a countervailable subsidy. Domestic interested parties further argue that the net countervailable subsidies determined in the final affirmative countervailing duty determination have not changed. They argue that the rates found in the investigation are the same net subsidy rates affirmed in the first sunset review.

Although domestic interested parties did not discuss programs, they argue that shipments of CTL Plate to the United States decreased dramatically following the imposition of the CVD order. Furthermore, they note that since the first sunset review, import levels of the subject merchandise remain at relatively low levels. Domestic interested parties believe that the imposition of the CVD order has had an effect on shipments of CTL Plate to the United States. Therefore, they argue that the order should not be revoked.

Department's Position

In their substantive response, domestic interested parties do not discuss specific programs that provided countervailable subsidies. Instead, they argue that import volumes of CTL Plate from Brazil declined following the imposition of the CVD order. Moreover, they argue that imports of CTL Plate to the United States from Brazil have stayed at low levels since the first sunset review. While the domestic interested parties' discussion of the CTL Plate shipment levels after the imposition of the CVD order is informative, the statute does not require the Department to consider such import levels for purposes of determining the likelihood of continuation or recurrence of a countervailable subsidy.

The Department makes its likelihood determination, (i.e., of whether revocation of the order is likely to lead to continuation or recurrence of a countervailable subsidy) on an order-wide (country-wide) basis, although company-specific rates are reported to the ITC. See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 879 and House Report, H.R. Rep. No. 103-826 (1994) at 56.

There was no participation in this review by any of the respondent interested parties. Further, except as noted below, the facts available to the Department indicate that the subsidy programs previously found countervailable continue to exist. Consequently, the Department finds that a countervailable subsidy is likely to continue or recur in the event that this countervailing duty order were revoked.

There have been no administrative reviews of this order since the first sunset review and no evidence has been submitted to the Department in this proceeding that demonstrates the termination of the countervailable programs. However, the Exemption of IPI and Duties on Imports under Decree-Law 2324 program, which the Department investigated and found countervailable in the original investigation, was also found to have been terminated in the investigation with no residual benefits. The Department recognized this termination in the investigation by establishing a cash deposit rate of zero percent for this program. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil; 58 FR 37295 (July 9, 1993).

2. Net Countervailable Subsidy Likely to Prevail

The domestic interested parties argue that the magnitude of the net countervailable subsidy rate likely to prevail is equal to the rate in the amended final determination to the investigation. Therefore, the rate provided to the ITC should be equal to that established in the amended final determination as the net countervailable subsidy likely to prevail if the CVD order were revoked.

Department's Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation, as the subsidy rate likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. See SAA at 890, and House Report at 64. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a net countervailable subsidy rate based on the "Country-wide" rate determined in the investigation.

In the amended final determination to the investigation, we found that the Government of Brazil ("GOB") provided countervailable subsidies to producers of the subject merchandise. Since that time, in the absence of administrative reviews, the net countervailable subsidy rate has remained unchanged. As noted above, we did not receive a response from any of the respondent interested parties in this sunset review. Therefore, because there is no evidence that changes have been made to any of the Brazilian subsidy programs, and absent any argument and evidence to the contrary, the Department determines, as it did in the first sunset review, that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 5.44 percent ad valorem for USIMINAS, 48.64 percent ad valorem for COSIPA, and 23.10 percent ad valorem for "all others." Consistent with section 752(b)(3) of the Act, the

Department will provide the ITC the net countervailable subsidy rate below in the section entitled “Final Results of Review.”

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC information concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). We note that Article 6.1 of the ASCM expired effective January 1, 2000.

In the instant review there were no programs that fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1. Equity Infusions: This program enabled USIMINAS and COSIPA to receive equity infusions from the GOB in the following years: USIMINAS, 1980 to 1988; and COSIPA, 1977 through 1991. We determined that equity infusions by the GOB into USIMINAS, in these years, and into COSIPA in the years 1997 through 1989 and 1991 were made on terms inconsistent with commercial considerations.
2. Fiscal Benefits by Virtue of the CDI: The CDI provides for the reduction of up to 100 percent of the import duties and up to 10 percent of the IPI tax (value-added tax) on certain imported machinery for specific projects.
3. IPI Rebate Program Under Law 7554/86: This Program consists of a rebate of 95 percent of the IPI tax paid on domestic sales of industrial products.
4. BNDES Financing: In this program, loans were provided in terms inconsistent with commercial considerations because the companies that received the loans were uncreditworthy.
5. Provision of Infrastructure: This program provides preferential interest on purchasing agreements with a government-owned steel holding company.

Final Results of Review

The Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Brazilian Manufacturers/Exporters	Net countervailable subsidy rate (percent)

Usinas Siderurgicas de Minas Gerais S.A. (“USIMINAS”)	5.44
Companhia Siderurgica Paulista (“COSIPA”)	48.64
All Others	23.10

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date